

Courier Dispatch Group, Inc. and Local 25, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 1-RC-19801

May 28, 1993

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On June 5, 1992, the Acting Regional Director for Region 1 issued a Decision and Direction of Election, of which pertinent portions are attached, in which she found that the petitioned-for unit of courier drivers employed at the Employer's Boston facility was an appropriate unit for collective bargaining.¹ Thereafter, in accordance with Section 102.57 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's decision, maintaining that the only appropriate unit must be coextensive with its New England region, which includes seven other facilities.²

By Order dated July 2, 1992, the Board granted the Employer's request for review. The election was conducted as scheduled on July 2, 1992, and the ballots were impounded.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record, including the Employer's supplemental brief, the Board has decided to affirm the Acting Regional Director's decision. The Board, in agreement with the Acting Regional Director and for the reasons stated by her, finds that the Employer has failed to rebut the presumptive appropriateness of the petitioned-for single-facility unit. See *Bowie Hall Trucking*, 290 NLRB 41 (1988).

In affirming the attached decision, we note in particular that the Acting Regional Director properly considered the lack of significant employee interchange in making her determination. While it is clear that a driver based at one facility occasionally may, after his or her arrival at a second of the Employer's facilities, be asked to begin a portion of a route assigned to a late-arriving driver employed at the second facility, such brief substitution does not constitute "interchange" or temporary transfer. See *Bowie Hall Trucking*, supra at 43 fn. 11; *Dayton Transport Corp.*, 270 NLRB 1114 (1984). Further, although drivers from the Boston terminal occasionally serve as "backup" drivers on

routes served by the Employer's Worcester facility, there is no record of the frequency of such occurrences, and no evidence of direct supervision by a local Worcester supervisor at those times. Lastly, the evidence fails to show any permanent transfers of courier drivers from the Boston terminal to the Employer's other facilities, or vice versa.

Contrary to the Employer's assertion in its brief on review, the instant case is distinguishable from *American Courier Corp.*, 184 NLRB 602 (1970), and *Purolator Courier Corp.*, 265 NLRB 659 (1982). Although the Employer's centralized administrative and operational functions are similar to those in *American Courier* and *Purolator Courier*, in this case there is neither evidence of overlapping supervision under which employees regularly work, nor evidence of frequent transfers (which were found to be "fairly commonplace" in *Purolator Courier*, supra at 662). Compare also *Dayton Transport*, supra.

Thus, for the above reasons and those set forth in the attached decision, we agree with the Acting Regional Director's finding that the Employer failed to show that the functional integration of its operations is so substantial as to negate the separate identity of the petitioned-for single-facility unit.

ORDER

The Acting Regional Director's Decision and Direction of Election is affirmed. The case is remanded to the Regional Director to open and count the ballots cast in the election held on July 2, 1992, prepare a tally of ballots, and issue an appropriate certification.

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I find that the presumptive appropriateness of the petitioned-for single-facility unit in Boston has been rebutted and that such a unit is not appropriate in this case. Inasmuch as the Union seeks only to represent a unit of Boston drivers, I would dismiss the representation petition.

APPENDIX

DECISION AND DIRECTION OF ELECTION

5. The Employer is a Delaware corporation engaged in providing scheduled ground courier services. The Petitioner seeks to represent a unit of all full-time and regular part-time courier drivers employed by the Employer at its Boston, Massachusetts facility, excluding mechanics, managerial employees, office clerical employees, guards, and supervisors as defined in the Act. The Employer contends that the only appropriate unit is a multilocation unit consisting of all courier drivers employed by the Employer at its eight New England facilities. The Employer would also include in the unit the classification of mechanic.³ There are approximately 80 em-

¹The Acting Regional Director also found that the Boston-based mechanic should be included in the unit, and that the courier drivers are not statutory guards within the meaning of Sec. 9(b)(3) of the Act. There was no request for review of these determinations.

²These other facilities are located in Worcester, Massachusetts; Providence, Rhode Island; Hartford, Connecticut; Nashua, New Hampshire; and Portland, Lewiston, and Bangor, Maine.

³At the present time, the Employer employs only one mechanic, based at the Boston facility.

employees in the unit petitioned for, and approximately 250 employees in the unit proposed by the Employer. The Employer is in the business of providing scheduled pickup and delivery of materials and documents. Approximately 70 percent of the Employer's workload involves financial documents.

The Employer's national headquarters is located in Atlanta, Georgia. The Employer's New England Region is headquartered in Boston, Massachusetts, and includes the following other locations: Providence, Rhode Island; Hartford, Connecticut; Worcester, Massachusetts; Nashua, New Hampshire; and Portland, Lewiston, and Bangor, Maine. The distances from each of the satellite facilities to the Boston facility are as follows: Bangor, 238 miles; Lewiston, 138 miles; Portland, 103 miles; Hartford, 93 miles; Providence, 43 miles; Worcester, 40 miles; and Nashua, 38 miles.⁴

David England is the regional manager for the eight New England facilities, with overall responsibility for the entire regional operation. England, who works out of his home in New Hampshire or his car, does not have an office at any of the facilities. Instead, he has daily contact by telephone with the operations managers, who oversee the supervisors at each facility, and with the other managers named herein. He also visits each facility at least twice a month. Reporting directly to England are Operations Managers Richard Sheehan (Providence), Diane Feeley (three Maine facilities), Mark Williams (Nashua), and Doug Mellum (Hartford).⁵ Reporting to the operations managers are the operations supervisors: Fern Gravel (Lewiston); Ron Reilly (Portland); Daniel Knowles and Bob Sands (Bangor),⁶ Noreen Nolan, Alan Manly, and Morris Mickie (Hartford); Ronald Houle (Worcester); and Gilberto Rodriguez, Rick O'Connor, Wilfredo Barroso, Santos Toledo, William Despagne, Robert Moline, Victor Diaz, and Gayle Clarke (Boston). In addition, Regional Sales Manager Christopher Smith and Regional Operations Analyst John Fortin, both of whom are based in Boston, report directly to England.

Also reporting to England is Massachusetts General Manager Jeanne King, who oversees the Boston and Worcester operations. In addition, King has overall responsibility for the regional personnel, accounting, safety, customer service, and fleet maintenance departments. Personnel Manager Bernard Val, Accounting Manager Jack Perola, Safety Manager Lynne Aubertin, Customer Service Manager Joe O'Connor, and Fleet Maintenance Manager Manny Rodrigues report to King. King also supervises Operations Manager Larry Chabre, who is based in the Boston office, but who manages operations in both Boston and Worcester. The Employer's accounting, sales, purchasing, customer service, and vehicle maintenance functions are centralized. Perola is responsible for all accounting and bookkeeping for the New England Region.⁷ Smith and Account Executive Enrique Calixto, who reports to Smith, solicit new accounts throughout the Region.

⁴ The distances between the various satellite locations were not stated in the record.

⁵ During the course of the hearing, Mellum resigned his position. His duties are being temporarily performed by Richard Sheehan.

⁶ Knowles is a senior operations supervisor, and Operations Supervisor Bob Sands reports to him. Bangor is the only facility that makes such a distinction.

⁷ Revenues are credited, and expenses charged, on a regional basis. Invoices and payroll are paid by checks issued in Atlanta. England approves all invoices and purchases for the Region.

O'Connor and Clarke respond to all customer complaints in the Region. These complaints are usually received via a toll-free telephone number which rings in Boston.⁸ Upon receiving a complaint, O'Connor or Clarke attempts to contact the driver involved via two-way radio, or the driver's immediate supervisor at the local facility.

Maintenance of the Employer's approximately 170 vehicles is performed at the Boston facility. Fleet Maintenance Manager Manny Rodrigues schedules routine maintenance for all vehicles such that they are rotated through the Boston facility every 30–45 days. During the course of their regular routes, drivers from throughout the Region bring their vehicles to the Boston facility for servicing pursuant to a schedule established by Rodriguez. They leave their vehicles overnight, pick up new vehicles in Boston, and continue their routes. The next day, those same drivers return to the Boston facility and exchange vehicles again, continuing their routes with the same vehicles they left for repair the day before. All regularly scheduled maintenance is performed by Angel Rodriguez, the Employer's only mechanic.

The Employer's personnel policies are also centralized. Employee records, including personnel files, job applications, wage change records, and disciplinary actions for all employees in the Region are maintained in the Boston office. All drivers in the Region receive a copy of the same Driver Handbook, which contains the drivers' job description, duties and responsibilities, work rules, and information on personnel issues.

Employees are primarily supervised by the operations supervisor or operations manager based in the individual facilities.⁹ Local supervisors work closely with the drivers on a day-to-day basis. When drivers report to work the local supervisors distribute to them keys to the vehicles, and to the various customer facilities that require keys for access. Local supervisors may receive calls from drivers who are having difficulties with their routes. They also perform drivers' evaluations, and make recommendations to England about pay increases and disciplinary actions. In its posthearing brief, the Employer implies that England, himself, is intimately involved in the supervision of drivers. The record does not support this suggestion. While the record does not indicate the exact parameters of the local supervisors' authority, it is clear that they, not England, have primary responsibility for the day-to-day supervision of the drivers.

The Employer presented some evidence of common supervision of drivers based at the satellite facilities, particularly those whose shifts begin during the night. Drivers work various shifts, which are not fixed within or among the facilities, but begin and end at various times throughout the day and night. The shift worked by any particular driver depends on the route he drives. While all the facilities operate 24 hours a day, most do not have supervisors on duty around the clock. Thus, when a night-shift driver at one of the satellite facilities reports to work, he reports by telephone to a

⁸ Occasionally, where a customer has, in the past, dealt with a person at the local facility, the customer will contact the local office directly.

⁹ At most facilities, employees report to an operations supervisors. Since Nashua and Providence do not have operations supervisors, however, at those facilities drivers report directly to the operations managers. The term "local supervisor" will be used herein to denote the first-line supervisors at the various facilities.

Boston-based supervisor, who gives him instructions as to any changes in his route for the day.

The process for hiring new employees is uniform throughout the Region. When the Employer has an opening for a driver, Val places an advertisement in those newspapers serving the area where the available position is located. Applicants for all positions are typically instructed to call a toll-free number, which rings in Boston. Val conducts screening interviews over the telephone and sets up personal interviews with selected applicants. If the position is in the Boston facility, Val conducts the personal interview. If the position is at one of the satellite facilities, Val arranges a time for the applicant to meet with one of the supervisors at that facility. He occasionally conducts interviews of candidates for positions at the satellite offices himself, but, usually, he directs an on-site supervisor to meet with the candidates that he has selected for interviews. The interviewer makes a recommendation to England, who has the ultimate authority to make hiring decisions. The record does not disclose whether England has ever rejected the recommendation of a supervisor.

England testified at the hearing that local supervisors can recommend wage increases to employees. England reviews the supervisor's recommendation and decides whether the employee will receive the increase. The Employer presented no evidence regarding instances in which England denied a recommended raise.

Local supervisors have the authority to recommend discipline and discharge of employees to England, and England has final authority in this regard. An exception to this practice would occur in a case of a gross violation of company policy. In that event, the local supervisor would have the authority to suspend the employee pending an investigation. England testified that he would review the matter before any further action is taken. The record is unclear, however, as to the extent of the independent investigation, if any, England would perform in such a situation. At the hearing, England testified about three recent situations in which supervisors sought England's approval for discharge. In at least two of those situations, England disagreed with the supervisor and overruled the local decision. One situation involved a Providence supervisor who recommended the discharge of an employee for use of profanity in front of a customer. England refused to discharge the employee, and decided to reprimand him instead.

All drivers in the Region receive the same starting pay, vacation benefit, and holidays. All receive the same 3-day, on-the-job training, and all are given the same road test following training. All wear the same uniform. None receives health insurance or other benefits. Seniority at the Employer is based on service with the Region.

All drivers in the Region have the same job skills and duties. Each driver has a home facility where he punches a timecard, reports to his supervisor, and picks up his vehicle and keys everyday. After conducting a walk-around check of his vehicle, he begins his route. Ninety to 95 percent of his day is spent on the road, making deliveries and pickups according to his manifest. After his scheduled pickups and deliveries have been made, he returns to his home terminal, hands in his keys and completed manifest, fills out a car condition report and a maintenance report, if necessary, and fuels up his vehicle. Only Boston and Providence have on-

site fuel facilities. At the other satellite terminals, drivers fuel up at retail stations with which the Employer has contracted. Only the Boston fueling station is owned by the Employer; drivers passing through Boston during the day stop for fuel, since it is cheaper in Boston than at retail stations.

The Employer's pickup and delivery service is specialized and regular, and involves the same roster of customers on a daily or weekly basis. As a result, the routes covered each day are generally fixed. Both the Employer and its drivers know exactly where they will be picking up and delivering from day to day, and, in most cases, from week to week. Regional personnel in Boston are responsible for the creation and assignment of routes.

At the hearing the Employer presented evidence regarding the functional integration of the work performed out of the various facilities. While drivers report to their home facilities each day, their routes take them to the areas served by other facilities. In addition, their routes may take them to customers of the Employer who are located closer to a facility other than their home facility. For example, drivers based at each of the eight facilities make daily deliveries to Fleet/Norstar's Operations Center in Woburn, Massachusetts.

The Employer's 220 New England routes are not arranged by state or territory. Boston drivers regularly service customers in Rhode Island, Connecticut, New Hampshire, and Maine, and make pickups and deliveries at the Employer's facilities in each of those states. England testified that at least half of the 66 Boston-based routes involve work that has come from, or is going to, other facilities. For example, a Hartford-based driver picks up work each morning in Avon, Connecticut, and transports it to the Employer's Boston terminal. When he arrives in Boston, between 7:45 and 8 a.m., about 15 Boston-based drivers are waiting for him so that they can begin their routes for the day. The packages on the Connecticut truck are divided among the waiting drivers according to route, and the Boston-based drivers then deliver them to various points in Massachusetts, New Hampshire, and Maine. Packages picked up by a driver based in one facility are often delivered by a driver based in another facility. Packages are often relayed through several of the Employer's facilities before reaching their destination.

Drivers from the various satellite facilities have frequent contact with each other. In addition to the type of contact described above, contact between drivers occurs when drivers fuel up at the Boston facility, and when they bring their vehicles in for regularly scheduled maintenance. Drivers also regularly meet while making pickups or deliveries at the various customer locations. The schedules of approximately 45 percent of the Boston based drivers result in instances of scheduled contact with drivers from other facilities each day. England testified that a driver stopping at one of the Employer's facilities is likely to be there for 15 to 30 minutes. During this time, the drivers may have formal, scheduled contacts, such as the exchange of packages for delivery. They may also have informal contacts during this time.

The Employer presented some evidence concerning temporary transfers and employee interchange. Interchange among employees at different facilities occurs when a driver calls in sick, has a disabled vehicle, or for some other reason is unable to complete his route. England testified, for example, that lead drivers, who, like other drivers, are hourly employees, are trained on several routes so that they can fill in

for drivers who call in sick. There is no evidence in the record, however, indicating whether lead drivers fill in only on routes originating out of their own facilities, or out of other facilities as well. He also testified that, when a lead driver is not available for backup, a driver from another facility is assigned to begin the route. According to England's testimony, the latter situation occurs on a daily basis. England also testified about a Providence-based driver who was in Maine on his regular run when he started to experience chest pains. He pulled over, called the Boston office, and was taken to a hospital in Maine. Safety Manager Aubertin called the Lewiston facility, which sent a driver and a supervisor to where the Providence driver had left his vehicle. The Lewiston driver recovered the vehicle and completed the route. A second Lewiston driver returned the vehicle to Providence the next day. The Employer did not present evidence as to the frequency with which this type of interchange occurs.

The Employer did not present any evidence establishing the percentage of work handled by someone other than the driver regularly assigned to the route. It also did not present any documentary evidence showing the frequency or scope of such temporary transfers. According to England, the Employer does not keep records of temporary transfers because they are made on an ad hoc basis.

The Employer also presented evidence of a particular kind of interchange between Boston and Worcester. Because Worcester is the smallest facility in the Region, with only six drivers, Boston drivers are trained on Worcester routes. There is, however, no record evidence of the frequency with which Boston-based drivers are actually used to perform Worcester runs.

England cited other examples of situations where drivers would be temporarily assigned to routes that originated in another facility. If a Connecticut driver is delayed on his way to make a pickup at the Federal Reserve Bank in Boston, he would call the Boston office, which would send a Boston-based driver to make the pickup.

Another situation giving rise to such temporary transfers occurs when an employee reports to work late. The driver's supervisor would call the Boston office, which would send someone to make the pickup and bring it to the driver who was late reporting.

At times the Employer needs to reorganize its services. On these occasions, the Employer generally makes a permanent reassignment of routes between facilities rather than transferring employees between facilities. This practice virtually eliminates the need for permanent transfers within the Region. At the hearing, England could not recall an instance of a permanent transfer of an employee.

None of the employees here petitioned for has been the subject of previous petitions.¹⁰ There is no bargaining history among the unit employees, and no other labor organization seeks to represent the employees on a broader basis.

It is well established that, when considering a multifacility operation, a single facility unit is presumptively appropriate for collective bargaining. *Dayton Transport Corp.*, 270 NLRB 1114 (1984). This presumption may be overcome by

a showing of functional integration so substantial as to negate the separate identity of the single facility unit. *Globe Furniture Rentals*, 298 NLRB 288 (1990). In deciding whether the presumption has been rebutted, the Board considers such factors as the centralized control over daily operations and labor relations; employees' skills, job functions, wages, benefits and working conditions; common supervision of employees and facilities; employee contact and interchange; and the geographic proximity of the facilities. *Dixie Belle Mills*, 139 NLRB 629, 631 (1962); *Sol's*, 272 NLRB 621 (1981).

Here, I find, primarily in light of the absence of substantial employee interchange, and in view of the geographical separateness of the Employer's facilities, that the presumptive appropriateness of a single location unit has not been rebutted. *Bowie Hall Trucking*, 290 NLRB 41 (1988); *United Artists Communications*, 280 NLRB 1056 (1986).

It is true, as the Employer contends, that the Employer's administrative and personnel functions are centralized, and that the ultimate responsibility for hire, discharge, and discipline is at the regional level. In addition, there is some evidence of common supervision among employees at the various facilities. This is especially true for those drivers who begin their shifts when no local supervisor is on duty, and who, therefore, report to a Boston-based supervisor in that circumstance. Generally, however, it is the drivers' immediate, local supervisor who makes decisions involving matters which make up employees' lives and routine problems. Local supervisors participate in the interview and hiring process at the satellite facilities, initiate and recommend disciplinary action at all facilities, assure compliance with applicable rules and regulations, and conduct employee evaluations. The fact that England and other regional personnel are also involved in these decisions does not negate the significant impact that local supervisors have on the day-to-day affairs at their facilities. *Penn Color*, 249 NLRB 1117, 1119 (1980), and cases cited at footnote 10 therein; *Renzetti's Market*, 238 NLRB 174, 176 (1978). This is especially true here where there is no evidence that regional personnel conduct an independent investigation of the facts surrounding each incident of discipline.

While the Employer's evidence establishes some functional integration among its various facilities, it does not clearly establish the critical factor of employee interchange. The Employer's exhibits are ambiguous on both the scope and frequency of temporary transfers of assignments, and, thus, do not permit an exact accounting of the total amount of work interchanged compared to the total amount of work performed. For example, England estimated that the Employer's 220 routes amount to approximately 20 stops per day for each of the 250 drivers, or about 1400 total stops throughout the region every day. Although he testified that work is temporarily transferred from one employee to another on a daily basis, there is no record evidence of how many stops or runs are made each day by someone other than the regularly assigned driver. The type of interchange which seems to occur most regularly involves a driver making one pickup or delivery for another, not an entire run. Thus, the term "run" does not accurately reflect the amount of work performed by an employee on the occasion of an interchange. Because the Employer did not offer any evidence which would permit an examination of the frequency with which employees perform

¹⁰ Pursuant to a Stipulated Election Agreement, the Employer's Georgia drivers, who work out of various facilities in that State, are organized in one bargaining unit.

work normally assigned to another facility, the ratio of interchanged work to total work cannot be determined with precision. Thus, it is difficult to measure the significance of the evidence of driver interchange introduced at the hearing. Therefore, on balance, I do not find the amount or frequency of the work interchanged to be significant or substantial when compared to the number of runs and stops performed every day by the Employer's drivers. Compare *Dayton Transport Corp.*, supra. Moreover, the Employer's witness could not recall any instances of permanent transfers, either forced or voluntary. In fact, Employer's Exhibit 15 suggests that the Employer takes care to avoid employee interchange wherever possible, since it has, on many occasions, avoided the necessity of transferring employees by transferring work from one terminal to another instead. In these circumstances, it cannot be said that the separate identity of the petitioned-for unit has been negated.

The geographical distance between the Employer's eight facilities militates against a finding that a multilocation unit is the only appropriate unit. The Employer's evidence establishes that the distance between Boston and any of the satellite facilities ranges as high as 238 miles. I take administrative notice, however, that the distances between the various satellite facilities to be included in the Employer's proposed unit are far greater. For instance, it is approximately 350 miles from Bangor to Hartford. While geographical proximity is not the controlling factor especially in view of the nature of the Employers operation, *Dayton Transport Corp.*, supra at 1115-1116, it gains significance when other factors also suggest the appropriateness of a single location unit. *Bowie Hall Trucking*, supra at 43.

The unit here petitioned for is presumptively appropriate even though a broader unit might also be appropriate. This presumptively appropriate unit assures employees the fullest freedom in exercising the rights guaranteed under the Act. *Manor Healthcare Corp.*, 285 NLRB 224 (1987). Accordingly, and relying particularly on the insubstantial interchange, the geographical distance, the lack of bargaining history, and the fact that no labor organization seeks to represent the employees on a broader basis, I find that the Petitioner's requested single-facility unit is an appropriate unit. *Bowie Hall Trucking*, supra; *P & C (Cross Co.)*, 228 NLRB 1443 (1977).

Mechanic Issue

The parties disagree as to the unit placement of the mechanic. The Petitioner contends that the classification should be excluded from the unit because it is not within the classification of drivers. The Employer asserts that the mechanic shares a community of interest with the drivers and should be included in the unit.

The Employer employs only one mechanic, Angel Rodriguez, who works in the Boston facility. Until the position was created in early 1992, Rodriguez had been a Boston-based driver for the Employer.

Rodriguez' primary responsibility is the routine maintenance of all company vehicles. Pursuant to a schedule established by his supervisor, Manny Rodriguez, he performs such tasks as lubrication, oil and filter changes, and antifreeze

changes.¹¹ He also makes minor repairs on vehicles, such as headlight and tire changes. Rodriguez spends most of his workday in the fleet maintenance area, which is separated from the bay area where drivers park, unload, and clean their vehicles by a wall with a large opening. He has regular contact with drivers, who report any vehicle problems to him. The drivers fill out written car condition reports, but also typically discuss any problems with Rodriguez directly. On occasion, when drivers are stranded on the road, Rodriguez brings gas, parts, or a new vehicle to them. Rodriguez also has informal contacts with the drivers, both in the bay area and in the dispatch office. He also has use of the drivers' room, where the only coffee machine is located.

Rodriguez works from about 2 or 3 p.m. until about 10 or 11 p.m., 5 days a week. He receives the same benefits as drivers. He is not subject to the same procedure as drivers for requesting vacation time, but rather makes his requests for time off directly to his supervisor. His performance evaluations, like those of the drivers, are performed annually.

As a general matter, the Board views the classifications of driver and mechanic as functionally integrated and finds that they may appropriately be included in the same unit. *Airco, Inc.*, 273 NLRB 348, 349 (1984); *Carpenter Trucking*, 266 NLRB 907, 908 (1983). Here, the mechanic performs functions that are closely related to those of the drivers. He relies on the drivers' input in order to make routine repairs on their vehicles, and has regular, work-related contact with them. He is physically located next to the area where drivers load and unload their vehicles, and he shares their break area. The mechanic is hourly paid, and although his rate of pay is more than that of the drivers, that is not a sufficient ground upon which to exclude an employee from the unit. He receives the same benefits as the drivers and works under the same set of personnel policies. Therefore, I find that the mechanic shares a sufficient community of interest with the drivers such that he should be included in a unit with the drivers. This conclusion is supported by the fact that if he were to be excluded from the unit found appropriate, he would be the only unrepresented employee of the Employer at this location. *Private Medical Group of New Rochelle*, 218 NLRB 1315, 1316 (1975). Accordingly, I will include the mechanic in the unit found appropriate.

Guard Issue

The Employer has suggested, without asserting, that its courier drivers are guards within the meaning of Section 9(b)(3) of the Act. Thus, the Employer's suggestion continues, the Petitioner cannot be certified to represent these employees because Section 9(b)(3) of the Act prohibits a labor organization from representing guards if, like the Petitioner, it admits nonguards to membership. The Petitioner takes the position that the employees sought by it in this case are not guards within the meaning of the Act.

The Employer's drivers are primarily responsible for the pickup, transportation, and delivery of financial documents. They transport payrolls, canceled checks, cash letters and other time sensitive and valuable items, but not cash. When they are hired, drivers are photographed, but not fingerprinted. Their references are checked, as are their

¹¹ Major mechanical work is performed by outside contractors located close to the satellite facilities.

motor vehicle histories, but not their criminal records. They wear uniforms, but they are not armed. One of the drivers' job duties, as described in the employee handbook, is to safeguard customer property. However, England testified that the only means of safeguarding packages are the locks on the vehicles, a fire wall in the vehicles, and the locking bags and boxes in which packages are secured during transit. Drivers are instructed to use such "commonsense practices" as locking vehicles and removing keys from the ignition when the vehicle is unattended. When their routes require off-hours access to customers' premises,¹² drivers carry keys and combination codes. When they find evidence of a break-in at a customer location, the drivers are instructed to report it to a supervisor, usually in the Boston office. They do not enter the building or attempt to secure it, and they do not even call the police. Drivers are covered under a surety bond held by the Employer.

The Board has held that in order to be a statutory guard, the basic duties of a courier must focus on the *protection* of customer property. *Purolator Courier Corp.*, 300 NLRB 812, 814 (1990). I find that the Employer's drivers are not engaged directly and substantially in the protection of customer property, and, therefore, are not statutory guards. *Id.* at 814, citing *Purolator Courier Corp.*, 266 NLRB 384, 385 (1983).

The training and instruction given to the Employer's drivers regarding the security of customer property is minimal. Moreover, they are not trained or authorized to use weapons or force to secure property in their possession. Drivers are instructed to report evidence of suspicious activity to their supervisor rather than to protect the customer's premises or to notify the police.¹³ Thus, the couriers' duties, as actually

¹² After hours, most drivers have only minimal access to a customer's premises, typically via a hallway just inside the building, or a security box provided by the Employer for this purpose and secured just outside the building. Drivers are, however, often required to deactivate customer alarm systems using codes or combinations, and to reactivate them when they leave the premises.

¹³ While this fact does not by itself negate an employee's guard status, *A. W. Schlesinger Geriatric Center*, 267 NLRB 1363 (1983), it may, however, be considered where, as here, the couriers do not

performed, merely involve the pickup, transport and delivery of customer property. Although drivers are sometimes given keys to customer premises, these keys usually access only vestibules, hallways, and, sometimes, only the Employer's own secured boxes outside the customer's premises. Finally, there is no evidence in the record that the Employer holds itself out as anything other than a pickup and delivery service. accordingly, I find that the Employer's drivers are not guards within the meaning of Section 9(b)(3) of the Act, and that the Petitioner is, thus, not barred from being certified as their bargaining representative.

Accordingly,¹⁴ I will direct an election in the following unit:

All full-time and regular part-time courier drivers and mechanics employed by the Employer at its Boston, Massachusetts facility, but excluding managerial employees, office clerical employees, guards, and supervisors¹⁵ as defined in the Act.

[Direction of Election omitted from publication.]

otherwise meet the statutory requirements for guards. *Purolator Courier Corp.*, *supra* at 314.

¹⁴ To the extent that the Petitioner's posthearing brief refers to matters not contained in the record, such references have not been considered in this Decision.

¹⁵ In accordance with the stipulations of the parties and the record as a whole, the following individuals are found to be supervisors within the meaning of the Act and are excluded from the unit: David England, regional manager; Christopher Smith, regional sales manager; Jeanne King, general manager; Larry Chabre, operations manager; Gil Rodriguez, operations supervisor; Rick O'Conner, operations supervisor; Wilfredo Barroso, operations supervisor; Santos Toledo, operations supervisor; William Despagne, operations supervisor; Robert Moline, operations supervisor; Victor Diaz, operations supervisor; Gayle Clarke, operations supervisor; Bernard Val, regional personnel manager; Manny Rodrigues, fleet maintenance manager; Jack Perola, regional account manager; Lynne Aubertin, regional safety manager; Joe O'Conner, regional customer service manager; John Fortin, regional operations analyst; Ronald Houle, operations supervisor.